<u>Exhibit 1</u>

World Trade Organization,
<u>Australia:</u>
<u>Schedule of Specific Commitments, Supplement 3</u>,
GATS/SC/6/Suppl.3 (97-1470),
April 11, 1997
("Reference Paper")

WORLD TRADE ORGANIZATION

GATS/SC/6/Suppl.3
11 April 1997

(97-1470)

Trade in Services

AUSTRALIA

Schedule of Specific Commitments

Supplement 3

(This is authentic in English only)

This text supplements the entries relating to the Telecommunication services section contained on pages 24 to 25 of document GATS/SC/6.

AUSTRALIA - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
2. COMMUNICATION SERVICES C. <u>Telecommunications services</u> Covers the following sub-sectors from the Services Sectoral Classification List and related CPC numbers 7521,7522,7523, 7529**			

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
(a) Voice telephone services (b) Packet-switched data transmission services (c) Circuit-switched data transmission services (d) Telex services (e) Telegraph services (f) Facsimile services (g) Private leased circuit services (o) <u>Other</u> Digital Cellular services Paging services Personal Communications Services	(1) None (2) None (3) Primary supply of satellite services limited to two service providers (licensed general carriers) until 30 June 1997. Primary supply of public mobile cellular telecommunications services limited to three service providers (licensed mobile carriers) until 30 June 1997. The Government has introduced legislation aimed at implementing an unlimited number of basic telecommunications carrier licences from 1 July 1997 and no sector specific foreign equity limits for new carriers. Australia binds itself to the outcome of this Parliamentary process in terms of numbers of carrier licences and foreign equity applying to new carrier licences. An entity holding a new carrier licence must be a public body or a constitutional corporation under Australian law.	(1) None (2) None (3) None	The attached reference paper on regulatory principles is incorporated as additional commitments by Australia.

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
Trunked Radio System services Mobile Data Services Services covered by the Broadcasting Services Act 1992 are excluded from the basic telecommunications sector	The first licensed general carrier, Telstra, is government owned. Legislation permitting the sale of one third of the government's equity in Telstra comes into effect on 1 May 1997. Foreign equity will be limited to 35% of this one third (about 11.7% of total equity) with a limit of 5% of the one third (about 1.7% of total equity) available to individual or associated group foreign investors.		
	There are no limits on total foreign equity in Optus (holder of general carrier and mobile licence). However, foreign investment policy requirements for Optus are such that there are certain limits on the share of equity which any individual foreign shareholder may hold. There is a requirement for majority Australian ownership of Vodafone (holder of a mobile carrier licence). Measures shall be maintained to ensure that these arrangements continue to apply after 30 June 1997.	The Chairman and directors of Optus must be Australian citizens, other than those directors (who must comprise the minority) appointed by the two current major foreign investors.	
	(4) Unbound except as indicated in horizontal section.	(4) Unbound except as indicated in horizontal section.	

REFERENCE PAPER

Scope

The following are definitions and principles on the regulatory framework for the basic telecommunications services.

Definitions

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public telecommunications transport network or service that:

(a) are exclusively or predominantly provided by a single or limited number of suppliers; and

(b) cannot feasibly be economically or technically substituted in order to provide a service.

A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

(a) control over essential facilities; or

(b) use of its position in the market.

1. Competitive safeguards

1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:

(a) engaging in anti-competitive cross-subsidization;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

2. Interconnection

2.1 This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

2.2 Interconnection to be ensured[1]

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided.

(a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates[2];

(b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates[3] that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2.3 Public availability of the procedures for interconnection negotiations

The procedures applicable for interconnection to a major supplier will be made publicly available.

2.4 Transparency of interconnection arrangements

It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

---

1 The interconnection regime to apply in Australia from 1 July 1997 (subject to Parliamentary passage of the necessary legislation) will provide access on terms and conditions which are fair and reasonable to all parties and which do not unfairly discriminate between users. Access rights will be guaranteed by legislation and the terms and conditions of access will be established primarily through processes of commercial negotiation or by reference to access undertakings given by access providers which may draw upon an industry code of practice. Any code of practice and each access provider's undertaking will be subject to approval by the independent regulator.

2 Non-discrimination is taken to mean on an MFN and National Treatment basis. In the fully competitive market in Australia, the rate at which interconnection is provided is determined by negotiation. Both negotiating parties have recourse to an independent arbitrator which will make a decision based on transparent criteria to ensure that rates are fair and reasonable in the circumstances.

3 The independent arbitrator may resolve any dispute on what costs are relevant in determining rates (see footnote 2).

2.5 Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier will have recourse, either:

(a) at any time or

(b) after a reasonable period of time which has been made publicly known

to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

3. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

4. Public availability of licensing criteria

Where a licence is required, the following will be made publicly available:

(a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of individual licences.

The reasons for the denial of a licence will be made known to the applicant upon request.

5. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

Exhibit 2

News Articles Cited

Order of Articles Included in Exhibit 2:

Telstra Beats Analysts' Expectations, Ouida Taaffe, Total Telecom, August 29, 2001

Dial T for Tyrant, Adele Ferguson, BRW Investigator, June 8, 2001

Optus' New COO Wades Into Telstra, Mike Newlands, Total Telecom, August 7, 2001

Optus Calls for a Halt to Telstra Tariff, Reuters, August 24, 2001

One.Tel Collapse May Ring Competition Changes, Total Telecom, May 31, 2001

Australian Politician Calls for Continued Control of Telstra, Mike Newlands, Total Telecom, July 20, 2001

Telstra beats analysts' expectations
By Ouida Taaffe, Total Telecom

Wednesday, August 29, 2001

Telstra today announced a profit for the year ending June 30, 2001 of A$4.058 billion, with a dividend of 11 cents. This net profit represents only a slight increase on the net profit of A$4 billion seen in 1999-2000 (before exceptional items) and reflects increasing competition in fixed services.

Overall, the result was slightly stronger than analysts had expected, following the profits warning given in June. The consensus had been net earnings of between A$3.6 billion and A$4 billion. There had also been worries prior to the announcement that Telstra's joint venture with Pacific Century Cyber Works, the Regional Wireless Company, would take the shine off the results.

David Moffat, the CFO of Telstra, is reported to have told the press that the JV had reduced earnings per share at Telstra - by 0.85 cents over the year. However, Telstra expressed confidence the partnership would make good in the longer term.

Telstra is a strong presence in Asia and stressed that its Asian investments are developing "to plan" apart from a write-down of A$1 billion at the Regional Wireless Company. This write-down is balanced by a A$852 million profit from the sale of Telstra's stake in Global Wholesale to Reach.

The CEO of Telstra, Ziggy Switkowski, told the investment community that the overall results were a function of two different operating environments. He said that, in the second half of the year, the telecom industry lost pace, dampening results. In the June profit warning, the earnings growth target for the year had been cut from 10% to around 5%.

Telstra said that its underlying sales revenue was A$18.9 billion, which was a 3.2% growth over the year. Underlying in this context means trying to compare like with like by excluding, for example, new business revenues, and previous results from businesses that have been sold. Sales revenue for 1999-2000 was given as A$18.6 billion in that set of results, though not as an "underlying" figure. It is said the results were affected by reduced growth in mobile, market share losses in fixed-line activities and overall "intense" price competition.

When one-off items, including asset sales and write-downs were taken into account, the underlying EBIT was A$6.4 billion. The EBIT including "abnormals" last year was A$5.9 billion.

Mobile has kangaroo bounce
In terms of segment, Telstra reported that the highest growth was in its mobile sector. The underlying revenue in mobile services was A$2.9 billion for the year, up 10% on the previous year's figures.

The growth drivers in mobile were said to be data services, up 324% to A$124 million, messaging, up 24.6 % to A$86 million and international roaming, up 33.3% to A$120 million.

In terms of traffic within mobile, the greatest growth was in CDMA services, particularly SMS messaging, up 67.5% to 469 million minutes. SMS messaging itself grew by 669%, albeit from a base of just 9 million originated messages in March 2000.

The overall mobile leader is GSM services, with 4.74 billion billable minutes, which represents a up 26% increase. All in all, the number of mobile telephone minutes increased by 20.6% year-on-year to 5.3 billion and the number of fixed to mobile minutes grew by 8.1% to 3.26 billion over the same period.

Fixed business wobbles

In the fixed business, the revenues from local calls was down 19%, to A$2.14 billion from A$2.64 billion in 1999-2000. The national long distance revenues were also hit, down 9.9% to 1.26 billion from 1.4 billion.

The actual number of minutes in local calls fell much less steeply than revenues, down 1.3% to 11.2 billion, making it the second largest segment of Telstra's activities by numbers of minutes. The same pattern could be seen in national long distance, which accounts for the largest number of minutes overall, and bundles fixed-to-fixed and fixed-to-mobile. In national long distance, the total number of minutes fell just 2.6%, to 12 billion. However, this figure was buoyed up by an 8.1% growth in fixed-to-mobile calls. Similarly, revenues in fixed-to-mobile grew 5.5% A$1.28 billion.

The number of international outgoing minutes decreased by 1.8% to 877 million and incoming international minutes fell by 27.7%to 747 million, year-on-year, while the number of fixed-to-fixed minutes also decreased, albeit less steeply, by 6% to 8.83 billion. Telstra suffered less in the national long distance minute market where the number of minutes it carried fell by 2.6% to 12 billion.

Cutting costs

The company said "Our cost reduction efforts have been a key driver in delivering our overall result." Telstra's underlying operating expenses (before interest), increased by 1.6% to A$12.8 billion. Telstra reduced its operational capital expenditure by 11.9%, to A$4.2 billion, excluding the A$302 million spent on 3G spectrum.

Telstra is still 50.1% owned by the Australian government. Competition with the incumbent is expected to start in earnest following the recent approval of SingTel's bid for Optus.

Investigator

Dial T for tyrant

voxbox

By Adele Ferguson

Email this article to a friend

Explore:

Contents for this issue:
BRW Vol 23 No. 22

Further parts to this story:
Shares set to bounce back

Network news

Portability will hit carriers

Broadband blast-off

Further Investigator articles this issue:
Disputes: The scam that wasn't

CEO poll: Business concedes Howard cannot win

Junior media barons Lachlan Murdoch and James Packer are in panic mode. As directors of the failed One.Tel, they are exposed to potential criminal and/or civil litigation if the Australian Securities and Investments Commission (Asic) finds that the board of directors knowingly allowed One.Tel to continue trading when it was insolvent. Packer and Murdoch are using every means they can, including the media, to prove that they were "profoundly misled" about the financial affairs of One.Tel. Packer and Murdoch have already wasted almost $1 billion on their investment in One.Tel. If ASIC concludes that they knew the company was insolvent, they and the other directors could be personally liable for debts incurred during the insolvency period. At this stage, that could be more than $600 million.

One.Tel's demise resulted from the combination of a bad business plan, a distaste in equity markets for telecommunications stocks, a drying-up of capital markets, greed and unmanageable debt repayments. Another element that has largely been overlooked is Telstra.

Cable & Wireless Optus has had most of the attention so far because of its attempt to snatch One.Tel customers when the company was placed in administration. But Telstra must shoulder some of the blame for One.Tel's woes: it owns the local network, and any carrier that wants access to it is at Telstra's mercy.

It is believed that One.Tel owes Telstra between $50 million and $100 million. One.Tel's failure was mainly due to a poor business plan, however industry sources say Telstra's high "interconnect" charges did not help matters. It is believed that, in the past month, Telstra considered buying One.Tel or putting it into receivership and had set up contingency plans to recover debts from the company.

There is a growing feeling in the telecommunications industry that the 1997 deregulation has failed and that the Australian Competition & Consumer Commission (ACCC) has lost the battle: 10 years after competition was introduced (with the arrival of Optus) and four years after the industry was fully deregulated, Telstra is still calling the shots.

If Telstra over-charges for access to its network, the rest of the industry suffers. If it delays access to new entrants, Australia suffers because of a lack of competition and innovation. One.Tel had been waiting for a final determination on the price it had to pay Telstra for public switched telephone network and interconnect fees - that is, the price paid by all carriers to terminate calls on Telstra's network. The fee was challenged by the ACCC in 1997 but the dispute, by the time it is settled in the Australian Competition Tribunal, will have taken five years. Many carriers, including One.Tel, WorldxChange and Comvergent, have run out of time. WorldxChange went into voluntary administration recently and Comvergent is hoping a management buyout succeeds, now that its debt-laden United States parent, RSL, has decided to pull out of Australia.

ZIGGY SWITKOWSKI:You could unzip (Telstra and its network), but anyone who argues that is just doing it for dramatics. *Image: Jessica Shapiro*

Other companies are also doing it tough in the Telstra-dominated telecommunications industry. Open Telecommunications has had to cut its costs and staff numbers by 20%; Davnet has announced a $38 million convertible notes issue; Macquarie Corporate Telecommunications has announced two earnings downgrades in two months; and PowerTel recently had to beg its parent company, the Williams group of the United States, to take up a $110.6 million rights issue. None has escaped the wrath of the equity markets, with most suffering share-price falls of more than 60% in the past 12 months and huge earnings downgrades.

With a strong balance sheet and free cashflow of $200 million a month after all capital expenditure, Telstra can afford to stall competitors' access to its network. Telstra spends about $55 million a year on legal advice, mostly aimed at appealing against access and/or pricing decisions. The chief executive of Davnet, Hal Turner, says the Telstra document concerning interconnect prices and procedures is 100 pages, making connection to the Telstra network burdensome.

Telstra dominates its industry. Of the more than 60 telecommunications carriers, 130 telephony service providers and 720 internet service providers (ISPs), Telstra accounts for more than 90% of the industry's profit. It has the largest market share in every industry segment: local telephony, long distance, mobile, data, ISP, and data and pay television. Despite deregulation of the telecommunications sector on July 1, 1997, Telstra's earnings before interest, tax, depreciation and amortisation have climbed from 40.5% to 50.5% today.

Telstra's rivals have been complaining about its power for years. Now, in an election year, the federal Minister for Communications, Information Technology and the Arts, Richard Alston, cannot afford to ignore their complaints. For Telstra, this spells trouble. Already Alston has threatened to increase the powers of the ACCC to reduce the number of arbitrations and speed up determinations, and there is growing political pressure to get Telstra to outsource its network. The reason? To level the playing field so that all participants can gain access to the network without fear of being blocked by the incumbent (see breakout, page 48).

The chief executive of Telstra, Ziggy Switkowski, denies that the growth in the company's profit margin since 1997 is evidence of weak competition, or that Telstra stops competitors from gaining access to its local fixed-line copper network. He blames the delays - and there are many - on the ACCC. "We are frustrated at the time it takes the ACCC to get outcomes," Switkowski says. "The mindset of Telstra is to welcome competition as a driver of improvement to competition."

The chairman of the ACCC, Allan Fels, sees it differently. "There are many delays but, essentially, the legal framework provides greater opportunities for Telstra, and occasionally other parties opposing Telstra, to delay decisions," he says. "The legal time is inappropriate for 'e' time, and legal processes that were established decades ago to protect the right of individuals are being used to protect the rights of a monopolist. Telstra is a monopolist in the sense that it has substantial market power and control of the network."

ON THE WAY DOWN

Price falls since deregulation

CATEGORY	PRICE FALL, 1996 TO 2000 (%)
International	53.0
STD	23.5
Mobiles	18.9
Local calls	13.0

SOURCE: AUSTRALIAN CONSUMERS ASSOCIATION

Telstra's high degree of market power, Fels says, is a concern for the future of the telecommunications sector. "First, Telstra has control of the network and it is vertically integrated, so that means that in every aspect of the market its competitors have to get access to it. Second, we are a little concerned that a couple of recent events - the takeover of Cable & Wireless Optus by Singapore Telecommunications and the takeover of AAPT by Telecom Corporation of New Zealand - might make Telstra feel it is in a strong position. Basically, I am not reading that there is going to be sharply intensified competition from these sources."

Fels is also concerned that a drying- up of capital markets for telecommunications companies will constrain investment and make Telstra's position even stronger. "That will slow down investment on some facilities," he says. "When competitors have their own facilities, that provides stronger competition. At the moment, they rely on Telstra for interconnection."

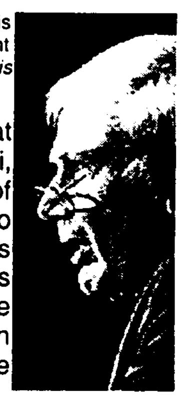
In an attempt to ease the concerns of Telstra's rivals, Alston held an urgent meeting of industry representatives on May 30 to discuss ways of improving competition. The meeting was in the small offices of the Australian Broadcasting Authority in Sydney, and the atmosphere was tense. Topics ranged from increasing the powers of the ACCC to splitting Telstra from its network. Up to 40 representatives of the industry attended the meeting, including Telstra, Optus and COMindico, as well as industry consultants.

Alston says deregulation has worked, but the Government cannot ignore the fact that a single, very powerful and effective company still dominates the market. "While I believe that Telstra is firmly committed to, and appreciates the benefits of, maximum competition, we must nevertheless be vigilant to ensure that bottleneck practices, delays and other gaming practices do not emerge." He also concedes that there are problems with the telecommunications access arrangements. "I will make a decision on some changes very soon."

The changes proposed by Alston, to be announced next week, are expected to include:

- Allowing the ACCC to hold multi-party arbitrations on disputes, to allow parties with similar disputes to be considered together rather than separately.
- Imposing time limits on disputes.
- Increasing the resources of the ACCC and appointing specialist arbitrators to assist the ACCC.
- Abolishing merit reviews to the Australian Competition Tribunal to accelerate decision-making.

RICHARD ALSTON: While I believe Telstra is committed to maximum competition, we must be vigilant that delays do not emerge. *Image: Paul Harris*



The senior manager, strategy, at Macquarie Corporate, Maha Krishnapillai, says there has been a great deal of frustration with the time it has taken to resolve disputes between Telstra and its rivals. He sees Alston's proposed changes as a step in the right direction. "If the ACCC takes a more pro- competition approach, outcomes may be quicker," he says.

Switkowski says anything more radical, such as separating Telstra and its network, would be a mistake.

"We continue to advocate the proper strategy is to be a full-service telco. We service the national interest best in that way. You could unzip it, but anyone who argues that is just doing it for dramatics."

BRW, however, believes that Telstra has appointed consultants to help it consider outsourcing the network. Valued at $30- 40 billion, the network would be contracted out to one of Telstra's suppliers, the intention being to sell it at some stage. "Within five years, Telstra will not own the network," one industry source says.

Switkowski claims that Telstra is not to blame for the problems of other telecommunications companies. He says many small companies have run into difficulties because of changes in the equity markets and investors' tougher scrutiny of cashflows and unwise or untimely investments. "We have a legacy of incumbency, and that starts us off at an attractive level," he says. "There is no evidence of our having pricing power in this marketplace. How could we, given the volume of competitors and the energy with which they come after us?"

The 24 disputes between Telstra and other carriers - some dating back several years - awaiting arbitration in the ACCC tell a different story. Paul Budde, of Paul Budde Communication, says the interconnect pricing to wholesalers is a good example of Telstra's pigheadedness and delaying tactics. "This has been discussed since 1992 but it has now been deferred to the High Court, with a hearing in 2002. This is a disgrace."

A TIGHT GRIP

Telstra's market share, May 2001

SERVICE	MARKET SHARE (%)
Data	85 -
Local calls	80*
STD	70
Pay television†	52
Mobile services	46
IDD	45
Internet service providers	25

* An additional 15% of customers, owned by Telstra's competitors, use local calls resold from the Telstra wholesale network.
† Telstra owns 50% of the pay-TV operator Foxtel.

SOURCE: BRW

Turner of Davnet says there should be a lot more than 24 arbitrations, but most of the carriers cannot afford the legal costs of taking on the mighty Telstra. "We, for one, cannot afford to compete with Telstra's legal arm. We have many problems with access and pricing, but there is little we can do but ride it out until the ACCC makes its determinations and turns interim decisions into final decisions."

Budde says telecommunications companies will run into trouble as long as Telstra owns the network. He says the demise of One.Tel is a black day for competition in Australia: it was the number- four company in the market (based on mobile-phone subscribers) and had played an important role in reducing the price of mobile-phone calls.

"There were 11 main telcos in the market in 1999; this had dropped to nine in 2000," Budde says. "By the end of this year this will have dropped to six, and by the end of next year we might end up with only three or four players. This is bad news for competition. After five years of legal wrangling, the underlying policies for competition have still not been implemented, as Telstra has been successful in delaying their introduction."

Robert Nason, vice-president of communications and electronics at A.T. Kearney, says the bloodbath in the telecommunications sector at the moment is not surprising, given the economic downturn. "Companies with lower-value customers suffer the most. There are three dimensions to competition that must be taken into account. One is that you can't just look at telephone companies competing only with other telephone companies, because IT service providers, utility companies and media companies are also part of the mix.

"Second, with globalisation you have to look at whether the market is domestic or global because, as companies merge, such as BHP and Billiton, they are looking for carriers that can service their needs across continents," Nason says. "This is a new dimension, and it means domestic incumbents are now competing with international carriers. Third, from a technology point of view, we are seeing competition at the device level. Will it be mobile or a fixed handset, the television versus the computer? These issues increase the level of competitiveness and make the whole debate about competition a lot more complex."

STEVE DEMETRIOU: Telstra tries to deny others coming on to the network. *Image: Paul Jones*

Frank Blount, who came to Australia in 1991 to lead Telstra in the period leading up to and after deregulation (he left the company in February 1999), claims that the execution of industry deregulation in Australia was one of the best in the world. "When I first arrived, the conventional wisdom was that Telstra would not be able to compete," he says. "The belief was that we would get our clock cleaned by the new competitor, Optus." Blount says those predictions were wrong for several reasons, including strategic blunders by Optus. "I focused on making Telstra very efficient by getting our costs down and introducing best practice. I also made it my job to get everybody focusing on the customer. This made the company much stronger. In the meantime, Optus, went down the wrong track. I would have gone into pockets of high-concentration traffic and hit the business sector. They started in the consumer market and the business was downstream." The failure of the $4 billion Optus cable network to provide genuine infrastructure competition to Telstra has added to Telstra's strength.

Terry Cutler of the telecommunications consultancy Cutler & Company says that Telstra is more powerful today than it was five years ago. Cutler, a former executive director of corporate strategy at Telstra, says: "No other Organisation for Economic Co-operation and Development market has the same level of incumbent dominance."

He says Telstra is rapidly becoming a unique business globally because of its degree of vertical integration across the telecommunications and media sectors (from backbone infrastructure to content) and its self-definition as a full- service provider. "This market positioning increases its market power with respect to niche or specialist market entrants, who need to rely on Telstra in some upstream or downstream market due to Telstra's market dominance and the lack of viable competitors at each and every point of the value chain. That is, end-to-end bypass of Telstra is not possible."

Given that Telstra's new master is the stockmarket, the company is under pressure to keep costs down and prices up. If it can get away - politically - with reducing capital expenditure, it will. The shadow minister for communications, Stephen Smith, said recently: "There are signs that investment is starting to falter. Since October last year, Telstra has significantly reduced its investment in its copper-wire customer-access network from a high average of $113 million a month to as little as $45 million a month, a decline of over 60%."

FRANK BLOUNT: I made it my job to get everyone focusing on the customer (while) Optus went down the wrong track. *Image: Paul Jones*

Smith says the key issue is whether the level of investment is enough to maintain Australia's international competitiveness and its position as a world leader in infrastructure provision. "While significant investment has occurred in (capital cities), inter-capital transmission routes and mobile communications, the regulatory framework has not delivered adequate investment in rural and regional infrastructure or the timely delivery of residential and commercial digital broadband infrastructure, in particular digital subscriber line (DSL) services, or the digitisation of Australia's two cable networks."

Telstra has been too successful in using the access regime to maintain its effective monopoly over the local loop, impeding the competitive roll-out of DSL services.

The next 12 months will be a difficult period for the sector. Unless Telstra's dominance is countered, things will get worse: Optus will wither as a competitive force, Telecom Corporation of New Zealand will become effectively irrelevant, Vodafone will probably sell its majority stake in Vodafone Pacific, and Telstra will pour its money into Asia instead of Australia. Telstra will become more profitable, but Australia will fall behind the rest of the world in the competitiveness and innovation of its telecommunications industry.

↑

Vox Box:

Anonymous: To increase efficiencies into this marke ....

D Goldsworthy: The perception of market dominence by Te ....

John Cox: Tel$tra. I wouldn't mind a monopoly if t ....

Phil Friend: The grip that Telstra has on the residen ....

Anonymous: Telstra, has over a considerable period ....

s|a|m: The recent annoucement by Testra's BigPo ....

Anonymous: For Telstra to succeed long term it will ....

Anonymous: The pipsqueaks should stop complaining: ....

Owen Woodcock: We run a small (200 customers) ISP in No ....

Anonymous: Unreasonable Telstra Bigpond Uses Monopl ....

Anonymous: The ignorance in the pro-TELSTRA comment ....

Anonymous: Readers of this article and the email ex ....

Anonymous: Telecommunications is a business and whi ....

Anonymous: An average Australian has strong consume ....

Anonymous: It's all Beazley's fault alway! Remembe ....

Graham Cole: Iam a smaller Regional ISP with 700 Clie ....

Gari: The current DSL debate is a prime exampl ....

C. Yorke: As a former Telecom employee (engineer), ...

Post your comment

From Australia's **BRW** Friday, June 08, 2001.

Optus' new COO wades into Telstra
By Mike Newlands, in Australia

07 August 2001

A leading executive at Cable & Wireless Optus, Australia's second-largest telco, has launched an attack on Telstra, accusing the dominant carrier of attempting to stifle competition to prop up its own revenue.

Paul O'Sullivan, recently appointed chief operating officer at Optus, claimed that Telstra is trying to boost its profits by forcing the country's competition regulator to sanction price increases.

Quoted in the *Sydney Morning Herald,* O'Sullivan said: "With a market environment that is tough and a lot of pressure on Telstra over profit, its response has been to withdraw from competition."

He was referring to documents leaked last week revealing Telstra had lodged a submission with the Australian Competition Tribunal challenging an Australian Competition and Consumer Commission (ACCC) ruling on the price Telstra can charge competitors to use its telephone network.

The ACCC had decreed that rival carriers Primus and AAPT would pay Telstra 1.77 cents a minute in 1999/2000 and 1.53 cents a minute in 2000/2001. Telstra is now looking to get a retroactive ruling fixing the 1999/2000 price at 2.33 cents per minute and the 2000/2001 price at 2.1 cents per minute, and is also requesting a surcharge per minute.

If the two junior telcos had to pay the rates Telstra is asking it could have a massive impact on their bottom lines.

While O'Sullivan did not have anything to say about the impact on other telcos, he accused Telstra of "seeking to fix its internal problems at the expense of the consumer."

In fact he hinted that Optus, which itself is the subject of a friendly take over bid from Singapore Telecommunications, may well take advantage of the troubles besetting smaller operators to make acquisitions. One.Tel has already been put into liquidation amid a great deal of publicity, while Davnet's shares remain suspended from trading on the Australian stock exchange.

O'Sullivan said Optus was interested in companies that presented synergies but not in those with flawed business models.

ecta
ecta Conference 2001
08-10 October 2001 – Bella Center, Copenhagen, Denmark

Optus calls for a halt to Telstra tariff appeal
By Reuters staff

Friday, August 24, 2001

A second ranked telco Cable & Wireless Optus Ltd called on Friday on the government to intervene in a dispute between Telstra Corp Ltd and its rivals on the price for the use of its network.

Telstra has gone to the Australian Competition Tribunal to appeal a decision on access prices made by the nation's competition regulator, the Australian Competition and Consumer Commission.

C&W Optus chief executive Chris Anderson said the government should intervene to stop Telstra appealing the ACCC decision as if they persisted and succeeded with what is reportedly a request for a doubling of prices the industry would be in serious trouble.

"Telstra is appealing the umpire's decision," Anderson told reporters told reporters after speaking at an American Chamber of Commerce lunch.

The ACCC, has indicated that Telstra's charge for access to its fixed line network should be 1.77 cents a minute for 1999/2000 and 1.53 cents a minute for 2000/01.

Telstra said it rejected the calls by C&W Optus, which is being taken over by Singapore Telecommunications Ltd.

"This is a commercial dispute with international competitors. It is about the size of the subsidy which Telstra shareholders are providing these companies to participate in the Australian marketplace," Telstra chief executive Ziggy Switkowski said in a statement.

Telstra shares rose 11 cents to A$4.93, outpacing the gains in the broader market, while C&W Optus rose five cents to A$3.77.

C&W Optus has risen from A$3.62 on Wednesday when SingTel won Australian government approval for its US$9 billion takeover of the group.

G.P.R.S. Aiming for the mass market!

Total Telecom Asia

One.Tel collapse may ring competition changes

By Total Telecom staff

31 May 2001

The Australian government is considering measures to further boost competition in the telecoms market following criticism that the dominance of incumbent Telstra contributed to the collapse of discount telco One.Tel, *Reuters* reported. One.Tel entered administration on Wednesday.

Communications Minister Richard Alston said in a radio interview that a number of measures were being considered following a meeting between the government, competition watchdog the Australian Competition and Consumer Commission (ACCC) and the country's main telcos, including Telstra. Measures under discussion include a possible strengthening of the ACCC's powers.

"Whether or not we need to strengthen the ACCC's hand is again another under consideration," Alston told *ABC Radio*. "I hope we will be able to get speedier outcomes and if there are ways we can achieve earlier resolution of these major issues relating to the last mile of the local loop then we will be able to do that and announce that fairly soon."

Alston said all parties wanted to remove the bottleneck in the local loop that had choked competition and speed up the process of resolving disputes over the price of access to Telstra's infrastructure.

Telstra, which is still 50.1% held by the government, owns around 95% percent of all networks in Australia, *Reuters* reported, and is required to sell capacity to competitors at a reasonable rate.

Access to Telstra's "last mile" has been the subject of fierce disputes between the incumbent and rivals.

Telstra argued against any strengthening of the ACCC's powers, *Reuters* reported, claiming this would only increase delays in resolving disputes. It instead insisted that its own six-point plan, suggested this week, would better clear the backlog in arbitration.

Telstra also firmly denied that its high wholesale prices had frozen One.Tel out of the market. "A few smaller telcos are arguing One.Tel collapsed because Telstra's wholesale prices are too high, but the ACCC sets the prices not Telstra," spokesman Andrew Maiden told *Reuters*.

"Telstra didn't kill One.Tel. One.Tel killed One.Tel. One.Tel failed because it had a poor business plan and kept its financial backers in the dark," he added.

Prime Minister John Howard also had little sympathy for One.Tel in another radio interview, saying investors only had themselves to blame for poor decisions in the face of an inevitable shakeout in the telecoms industry.

"There has been a great deal of exuberance in this whole high-tech area and some of it was bound to be based on fairly insubstantial activity and it was inevitable I suppose there'd be some fallout of this kind," Howard told Adelaide radio station *5DN*.

"If people make investments in a market environment they have to stand or fall on their own individual judgement and no government or no ACCC or no anybody else can really protect people against the consequences of their own investments," he added.

The Australian newspaper reported that One.Tel's main shareholders, Kerry Packer's PBL and Rupert Murdoch's News Corporation, could lose their entire investments in the firm, about A$384 million and A$575 million respectively.

Another institutional investor exposed by One.Tel's collapse is BT, which has invested almost A$200 million of investors' funds in the company, the newspaper reported.

Related News

- C&W Optus to write off A$68m One.Tel debt
- CSL plans CDMA network in Hong Kong
- One.Tel founder blasts administrators over cash estimates
- Centrica closes in on One.Tel U.K.
- Hutchison chooses Ericsson & Motorola for Australian 3G
- Primus says won't buy One.Tel network
- China Unicom Reaches Roaming Agreements with 13 Overseas Cdma Mobile Operators
- Primus may buy One.Tel mobile network

Related Features

- One.Tel sinks News Corp.'s mobile plans
- Incumbent cedes control of local network services
- Enterprise: Trends in the SME Market- Sell bundled services but keep the package simple
- Asia & Pacific: Market makers
- News in brief
- Microsoft courting mobile operators
- Dynegy offers European network a new future
- Asia&Pacific: Distant voices

The Home of Global Communications
TOTAL TELECOM

FROM THE EMAP COMMUNICATIONS GROUP

Total Telecom Asia

Australian politician calls for continued control of Telstra

By Mike Newlands, in Australia

20 July 2001

Email this article
Print (text only)
Related News
Related Features

Australian Labor Party leader Kim Beazley has made keeping Telstra Corp. majority state-owned a central campaign promise, in a move that is certain to make foreign telcos very nervous about the prospects of protectionism.

Although Australian politicians are as prone to breaking campaign promises as politicians elsewhere, this one will be more difficult to break than most as every Labor candidate will be made to sign a written pledge to retain government control of Telstra.

As well as wanting the state to own Telstra, which the incumbent coalition government is in the process of privatizing, Beazley also wants a Labor government to be able to influence its business decisions. He told a campaign meeting that majority public ownership of Telstra is "what gives us the capacity to influence the direction in which Telstra goes and the decisions they take. This is critical now to regional development," he said.

Beazley, considered to be a strong contender to be future prime minister, also made remarks to the effect that Telstra is important because it remains largely a monopoly which, in the words of one analyst, "will be of special interest to Telstra's competitors".

Cable & Wireless Optus, the subject of a takeover bid by Singapore Telecommunications, the Australian subsidiaries of Vodafone Group plc, Hutchison Whampoa and Telecom New Zealand, will be waiting nervously to hear more on Beazley's attitude to competition in the telecommunications sector. His latest statements seem to indicate it has more in common with the command economy than the prevailing wave of liberalization sweeping through the Asia Pacific and elsewhere.

An influential Australian newspaper, in an editorial, described Beazley's comments as "ideological nonsense."

Related News

Proposed law suit snowballs against Telstra ADSL

TIM latest to pick Speedwise for fast data delivery

HK operators to bid for 3G licenses despite complaints

Related Features

Floating Point: Message in a battle

Incumbent cedes control of local network services

Enterprise: Trends in the SME Market- Sell bundled services but keep the package simple

Asia & Pacific: Market makers

Total T
Indian
soar 87

Hong K
revenu
continu

Wipro
offset t

Exhibit 3

Supplemental Materials

TOO BIG? TOO BAD

New entrants in industries dominated by a few powerful players need more looking after, national business correspondent **Richard Gluyas** reports

A YEAR ago, Steve Demetriou leapt into the great unknown, trading the certainty of a senior executive position with Telstra for the hazards of a start-up, albeit one backed by AMP, JP Morgan, AGL, Kerry Packer and Rupert Murdoch.

But even 28 years with an incumbent telecommunications company failed to prepare Demetriou for some incendiary correspondence from his previous employer, delivered to his Sydney office three months ago.

Telstra's wholesale unit, despite striking a network-sharing agreement with COMindico — a telco infrastructure company — wrote to Demetriou and effectively "pulled the pin".

"We were shocked," the COMindico chief says. "Not so much at their capability of doing it but because of the agreement we thought we had."

COMindico's experience raises yet again the spectre of Telstra's awesome market power, a fact of life in telecommunications and many other industries in the rapidly consolidating economy.

Australian Competition and Consumer Commission chairman Allan Fels has reviewed the rash of company collapses including HIH, Impulse Airlines, Franklins and One.Tel and yesterday told *The Weekend Australian* he wants expanded powers to prosecute anti-competitive behaviour in markets dominated by powerful incumbents.

COMindico, of course, is not a hapless minnow. It is a $325 million venture with $175 million in private equity and $150 million of vendor finance from Cisco Systems for its network rollout.

Continued — Page 34

Too big? Too bad. It's ugly

From Page 33

AMP, AGL and the global investment bank JP Morgan, as well as the Packer and Murdoch families, have all bought the vision of a seamless network capable of delivering wholesale voice, data and video services across the nation, all for the cost of a local call.

But here's the rub. The COMindico network needs to be able to talk to, or interconnect with, Telstra's copper wire network.

And while Demetriou says there was absolutely no distinction in last year's agreement between data and voice, suddenly, come March this year, data was a problem.

"Telstra said interconnection at the data level could not be done efficiently," he says.

"Our response was, well, that means splitting our network, which diminishes our technology and undermines our whole value proposition."

Telstra denies this version of events, saying COMindico has always been told it should use a dedicated data network.

The carrier has offered its MegaPoP service which, it says, is "effectively" a data network, but COMindico responds that it would be relegated to the lowly status of a reseller.

Demetriou wonders aloud how much of Telstra's intransigence relates to the carrier's recent, acknowledged curbs on capital spending.

And what about COMindico, with a network boasting more efficient, internet-style transmission, being able to market its products ahead of Telstra cutting the ribbon on its own, $600 million network upgrade to deliver a similar capability?

"I think that might be part of it, too," Demetriou says cautiously.

After weeks of commercial haggling, COMindico raised the stakes this week, inviting Fels to issue one of his dreaded competition notices for anti-competitive behaviour.

If the ACCC chairman finds against Telstra, penalties can start running at $1 million a day while the conduct continues.

Fels will not discuss the COMindico case. However, judging from his comments on the general issue of misuse of market power, Telstra should prepare for the worst.

The ACCC chairman's tolerance for what he perceives as abuse of market power by companies in heavily concentrated industries has reached breaking point.

"I find it amazing that Telstra and other dominant firms are complaining about regulation when they are flourishing so much," he says.

"We need to start thinking about the fact that, maybe, we need stronger laws concerning misuse of market power across the board. The present laws are not so strong."

Fels, as justification for his view, points to the implosion of HIH and One.Tel, as well as Qantas's absorption of discount rival Impulse and the break-up of the Franklins supermarket chain.

He might also scan the Australian Telecommunications Users Group website, which laments that, four years after full competition was introduced, Telstra's margins have expanded from 1999-2001.

Not only that, the carrier still accounts for 95 per cent of the local call and access market, 85 per cent of the data market, 77 per cent of long distance, 47 per cent of international long distance and a staggering 90 per cent of industry profit.

In Fels's examination of recent company failures, he puts HIH to one side, saying it collapsed because of "business mistakes and strategic failure".

The other three, though, were operating in industries dominated by a few powerful players.

"What we need to do is make sure the legal framework for protecting new entrants is adequate," he says.

"When we make policy we should not lightly assume that entry to a market is easy.

"It is difficult for new players, and I think we have been overestimating how easy it is to get competition in markets where there are powerful incumbents."

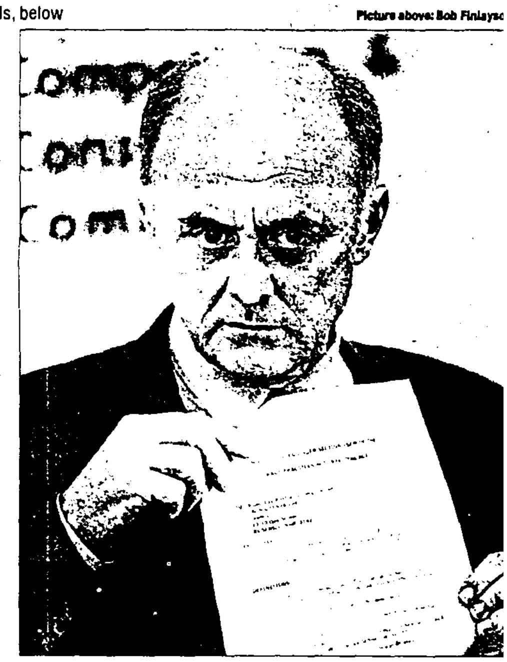
Looking at One.Tel in particular, Fels says, first of all, that typically there are multiple causes in any company failure.

However, it was also true that normal mistakes are magnified in importance when the start-up's competitors have the advantage of huge scale.

This is when the mistakes often prove to be fatal.

Taking on the bully: Steve Demetriou of Comindico, above; Allan Fels, below

Picture above: Bob Finlayson



'We need stronger laws concerning misuse of market power across the board'
Allan Fels
ACCC chairman

The ACCC chairman found an unusual ally this week in Rodney Adler, condemned for his activities as a non-executive director of both One.Tel and HIH.

Adler told a Young Business Forum lunch in Melbourne on Thursday that these two companies, as well as Impulse and Franklins, shared a common characteristic — they were discounters operating in duopoly industries.

"Each company failed for specific reasons but the common denominator to all four was clearly excessive discounting and poor management practices," Adler said.

"There are of course individual circumstances relating to each one, but all four must be considered as having been under-capitalised relative to their competitors."

In championing competition, Fels is proposing wider powers for the ACCC on section 46 of the Trade Practices Act, which proscribes misuse of market power.

He says the act is deliberately limited in its scope with the current "purpose" test: that is, a company with substantial market power is prevented from using it for an anti-competitive purpose.

If Fels has his way, the same behaviour would be prohibited where there was an anti-competitive purpose "or effect".

"The current test means that unless we have concrete evidence that the actual purpose of the conduct was to damage competition, then we just don't have a case," he says.

"The other problem is the complete mismatch between new-economy time and legal time, which is very slow.

"To get court orders, we have to be prepared to undertake lengthy litigation. It is important to accelerate the processes."

Consumers, start-ups and small-to-medium-sized businesses will welcome Fels's plea for greater powers.

However, it will be anathema to the big end of town, particularly the Business Council of Australia which represents the interests of about 100 of the nation's top companies.

Last February, the BCA said modernisation of the Trade Practices Act to take account of global competition and e-commerce would be one of its key priorities.

The BCA believes the focus on domestic competition is misguided, with the biggest threat to its members often coming from offshore.

National Competition Council chairman Graeme Samuel is wary, as well, urging caution in any push for new laws governing the exercise of monopoly powers.

Says Samuel: "We have to be very careful we don't go so far as to prevent dominant players engaging in normal competitive behaviour by using efficiencies they get through economies of scale."

Demetriou, meanwhile, is preparing COMindico for a round of mediation with Telstra next week, a process independent of the ACCC's continuing investigation of Telstra's conduct.

In his years at Telstra, the COMindico chief became well-acquainted with the company's culture.

"I was always very conscious of our size, cash flows and branding giving us incredible market power," he says.

"And while you're also conscious of the consumer and the political sentiment, the key driver was shareholder value and the share price."

Demetriou says Telstra is an ethical company, but its size and dominance give rise to "certain dilemmas".

The big question was how best to deal with those dilemmas.

Fels, for his part, has no choice but to administer the regulatory system formulated by the federal parliament.

But for Demetriou, there is another option.

"I've thought long and hard about this," he says. "Telstra will have a legacy network for some time, and clearly that investment has to be protected.

"But you also have to balance that against the need to introduce new competitors, and you shouldn't burden them with the cost of the existing infrastructure.

"The bottom line is, it's time for a break-up."

Telstra In Court For Deceiving One.Tel Customers

By Adam Creed, Newsbytes
CANBERRA, AUSTRALIA,
06 Jul 2001, 7:26 AM CST

E-Mail This Article
Printer-Friendly Version

In its eagerness to do battle for former subscribers of failed Australian mobile phone company One.Tel, Australia's largest phone company, Telstra, broke the law, according to the nation's consumer and competition watchdog.

The Australian Competition and Consumer Commission (ACCC) on Thursday lodged a case against Telstra in federal court in Melbourne.

The lawsuit alleges Telstra engaged in "unlawful misleading and deceptive conduct" when attempting to win over former One.Tel "Next Generation" subscribers.

Specifically, Telstra call center personnel told One.Tel subscribers they may have to pay additional fees if they signed up with competing mobile phone services.

"The ACCC is alleging that consumers were advised by Telstra representatives, as late as yesterday (Wednesday), that if they transferred their mobile phone service to any mobile phone service provider other than Telstra, or did not transfer to Telstra before a certain date, the One.Tel administrators may seek termination fees," said ACCC Chairman Allan Fels.

Fels said that because the One.Tel Next Generation mobile phone network was turned off on June 9, the ACCC believes no contract termination fees apply as One.Tel withdrew its own service.

"Clearly the customer must not incur a penalty when it is the business that stopped providing its services," he said.

But Telstra representatives said fees would apply where none could, "taking advantage of the confusion surrounding the demise of a competitor," Fels said.

The case was heard in Melbourne this afternoon. Telstra has been arguing that the situation regarding early termination fees has been unclear.

Reported By Newsbytes.com, http://www.newsbytes.com .

07:26 CST

(20010706/WIRES ASIA, TELECOM, LEGAL/)

Court grants injunction against Telstra for One.Tel representations

The Australian Competition and Consumer Commission's case against Telstra was adjourned today following an interim injunction ordered by the Court against Telstra that there be no further representations made to One.Tel Next Generation customers that if they transferred their business to Telstra's competitors, or failed to transfer to Telstra, or failed to transfer to Telstra by a specified date, they may be liable to pay termination fees to One.Tel.

"The ACCC welcomes the court making the interim injunction order which the Commission was seeking. This vindicates the ACCC's swift action," ACCC Chairman, Professor Allan Fels, said today. "Any failure by Telstra to comply with this interim injunction order would be at risk of constituting contempt of court."

The history of this matter is that the ACCC wrote to Telstra on Friday 29 June putting the allegations about the representations to Telstra and seeking assurances that these representations would not be made. The ACCC's letter was not public.

Telstra advised the ACCC on Monday 2 July that it denied the behaviour was occurring but in any case had issued instructions to prevent the behaviour happening.

The ACCC produced evidence on oath to the court that the behaviour continued this week, contrary to Telstra's written advice of 2 July, at least in respect of calls made by ACCC staff to the Telstra call centre.

The ACCC notes that yesterday (Thursday) and today in the morning, Telstra has continued to publicly deny that any such representations as the ACCC alleges have been made.

The ACCC also notes that since 9 June Telstra, which has the lists of One.Tel customers, has pursued an active program of contacting them. Some 200, 000 customers are involved.

"In view of this, the ACCC believes that among other things, the interim injunction ordered by the Federal Court was required." Professor Fels said.

The ACCC will now continue with this case seeking declarations of unlawful conduct, a permanent injunction to ensure the behaviour is not repeated, an opportunity for consumers who may have been misled to rescind their new Telstra contracts without penalty, corrective advertisements and a compliance program by Telstra.

Following the ACCC's announcement of the case yesterday, a considerable number of calls have been received on the ACCC hotline (1300 302 502) by other One.Tel customers claiming similar behaviour to that alleged in the case.

There have been some recent allegations that "prosecution by media release is eroding the relationship between business and the ACCC." Professor Fels noted that the courts have recognised that "a moderately worded, accurate news release" published by the ACCC serves a very useful purpose in ensuring that the media is not left to make its own inquiries and compile its own summaries with the risk that, by accident, inaccuracies might occur and greater harm done to defendants.

"In the ACCC's view the Public Interest nature of this matter warranted the course adopted by the ACCC in issuing a press release yesterday – clearly informing the Public including One.Tel customers what it was the ACCC was in fact doing." Said Professor Fels. "Telstra's continuing denials that it was making misleading statements to One.Tel customers made the public statement by the ACCC even more important in this case."

Further information

Professor Allan Fels, Chairman, (03) 9290 1812 or pager (02) 6285 6170

Ms Janet Millar, Acting Director, Public Relations, (02) 6243 1108 or (0414) 613 520.

MR 156/01 6 July 2001

ACCC Institutes Against Telstra for Misleading One.Tel Customers

The Australian Competition and Consumer Commission instituted proceedings in the Federal Court in Melbourne today alleging that Telstra engaged in unlawful misleading and deceptive conduct when dealing with former One.Tel mobile phone customers.

The court action concerns statements allegedly made by Telstra call centre representatives to consumers about early termination fees payable by One.Tel Next Generation customers.

"The ACCC is alleging that consumers were advised by Telstra representatives, as late as yesterday, that if they transferred their mobile phone service to any mobile phone service provider other than Telstra, or did not transfer to Telstra before a certain date, the One.Tel administrators may seek termination fees", ACCC Chairman, Professor Allan Fels, said today.

"In fact, the One.Tel Administrators turned off the Next Generation mobile phone network on 9 June 2001. It is the view of the ACCC that no contract termination fees can apply to customers who transfer to any other service provider after One.Tel withdrew its service. Clearly the customer must not incur a penalty when it is the business that stopped providing its services", he said.

The ACCC alleges that Telstra representatives continued to advise customers of the termination fee in circumstances where none could, or would, be levied.

"In the break up of One.Tel's assets, the ACCC is charged with ensuring that the consumer protection provisions in the Trade Practices Act prohibiting misleading and deceptive conduct are strongly enforced", Professor Fels said.

"This appears to be a case of a service provider taking advantage of the confusion surrounding the demise of a competitor. Clearly we are concerned if a service provider has obtained customers via misinformation, especially vulnerable and confused previous customers of One.Tel", he said.

The ACCC is seeking:

- Declarations that Telstra and its representatives engaged in conduct that was misleading or deceptive, or likely to mislead or deceive in contravention of sections 52(1), 53(c), 53(f), and 53(g) of the Trade Practices Act 1974;

- An injunction restraining Telstra and its representatives from making misleading representations of a similar kind in the future;

- Orders directing Telstra to allow consumers that were misled 14 days to rescind their contract with Telstra without penalty, and that Telstra repay any payments made by these customers and/or forfeit any amounts owing to it since 9 June 2001;

- Orders directing Telstra to place corrective advertisements in major metropolitan newspapers and write to affected consumers; and

- An order directing Telstra to implement a trade practices compliance program.

A hearing has been set for 2:15pm on Friday 6 July before Justice Heerey in the Federal Court, Melbourne.

Further information
Professor Allan Fels, Chairman, (03) 9290 1812 or pager (02) 6285 6170
Ms Janet Millar, Acting Director, Public Relations, (02) 6243 1108 or (0414) 613 520.
MR 153/01
5 July 2001

Today's Top Stories
Mobile & Satellite
Internet & E-commerce
Business & Regulatory
Network Infrastructure
Corporate Solutions
TT Finance
Total Telecom Asia
A Week of Total Telecom

Resources

Diary
Polls
TT Forum
White Papers
Telecoms Terms
A to Z links
The Wall St. Interview
Recruitment

Services

Email Newsletter
Media Kit
Print Subscriptions
TT Content Services

Marketplace

Find, Compare, and Buy
Phone Conferencing
Reports and Research

Portfolio

World Comms Awards
Comms Live Europe
CI Online
CWI Live
Roam

Total Telecom Asia

Telstra under pressure as doubts grow over strategy

By Mike Newlands, Australia

30 July 2001

Email this article
Print (text only)
Related News
Related Features

Pressure is mounting on Telstra Corp.'s chief executive Ziggy Switkowski with the company's share price at a three-year low, and falling. Analysts are also becoming increasingly dubious about the Australian incumbent's international joint ventures with the struggling Pacific Century CyberWorks.

A briefing for analysts late last week, including talks from the chief executives of Reach, the backbone joint venture, and regional mobile venture Regional Wireless, failed to convince them that Telstra has got anything like value for its money from the ventures. And some are now suggesting Switkowski is in danger of losing his job.

With the class action lawsuit being brought by incensed businesses using, or trying to use, Telstra's ADSL high-speed Internet access service, the carrier's image with the public has been further harmed.

And now, according to the respected *Australian Financial Review,* Telstra has made a confidential submission to the Australian Competition Tribunal seeking to almost double the wholesale prices it charges other telcos for use of its network. If the submission were successful it would bring in an extra $100 million in annual revenue, the *AFR* report claims, but by the same token it would deal a major blow to the cash flow of struggling second-tier telcos.

But what could really damage the smaller carriers if the submission is successful is that it could be backdated to 1999, when the Australian Consumer and Competition Commission decided to fix the wholesale price.

While analysts don't believe Telstra will be successful, news of the submission is not going to make it any more popular or Switkowski's job any easier.

Related News

Singapore mobile operators team for m-commerce

Telstra eyes Asian acquisitions

Australian mobile market reaches saturation

Moody's rates Telstra fixed rate bonds Aa3

Vodafone says Australia growth slows

PCCW drops planned bond issue

Related Features

Asia & pacific: Fools gold

Floating Point: Message in a battle

Incumbent cedes control of local network services

Enterprise: Trends in the SME Market - Sell bundled services but keep the package simple

Asia & Pacific: Market makers

News in brief

POLITICAL TRANSCRIPTS

Richard Alston, Communications Minister

June 17, 2001
Reporter : Laurie Oakes

Telstra is about to announce the outcome of a national review of its call zoning system which will include sweeteners for customers living in outer metropolitan areas in the form of reduced call prices. And as we've just seen, the announcement comes after a particularly bad week for the telecommunications giant with four billion dollars wiped off the value of its shares.

Well, to discuss Telstra's price cuts, Communications and Information Technology Minister Richard Alston is in our Melbourne studio this morning, and here to talk with him *Sunday*'s political editor, Laurie Oakes.

REPORTER: Morning, Jim. Senator Alston, welcome to the program.

SENATOR RICHARD ALSTON - FEDERAL MINISTER FOR COMMUNICATIONS AND INFORMATION TECHNOLOGY: Thanks, Laurie.

REPORTER: Now you've finally got some good news from Telstra. The long awaited result of their zone inquiry. What have they come up with?

ALSTON: Well, it has taken more than twelve months but I think it's addressing an issue that's been of long standing concern for many years. People in outer metropolitan areas who make a lot of phone calls to the CBDs and the inner suburbs have previously had to pay STD timed calls. Now they'll get a twenty-five cent flat rate call so it's a new wide area call.

And those in regional areas who have previously paid STD calls ... if they're within eighty-five kilometres of the central point, then they will get a ninety-nine cent flat rate charge for up to three hours. And that...

REPORTER: How many people will benefit from all this?

ALSTON: Telstra estimated up to two hundred thousand people - Telstra customers - are likely to benefit from that. It will effectively halve the price for a ten minute call in those regional areas and itÃ¢â‚¬â„¢ll address this long running sore for people, particularly in enclaves. There are some parts of the metropolitan area where they pay STD calls and people on either area where they pay STD calls and people on either side of them are paying local calls.

REPORTER: Have you got any idea how much people will save on their phone bills?

ALSTON: Well, for a ten minute call in regional areas, you'd probably be looking at ninety-nine cents instead of about two dollars eight but if it goes on for twenty minutes, you might save three quarters of the cost of the call. So it's quite substantial.

REPORTER: Is this going to help the government in the election, do you think?

ALSTON: Well, I think it's part of our ongoing approach, Laurie, to try and ensure that you get as many price choices as possible, that you minimise the differences between regional and rural Australia, on the one hand, and metropolitan on the other. And that you try and extend the boundaries as much as you can consistent with the gains that we're achieving from new technology.

REPORTER: This, though, will still leave people in the bush at a disadvantage compared to the people in the city, won't it?

ALSTON: Well it's a huge step forward, Laurie. I think we're still a fair way away from having a sort of a universal national flat rate charge because...

REPORTER: What's the problem with that? I mean, why is that so impossible?

ALSTON: Well, essentially the carriers - and Telstra of course is the dominant player - have huge sunk costs and they've put those systems in place based on distance charging. And there is no doubt that if you've got many local exchanges and switches that are based on that sort of regime, you've got to be entitled to recover a fair return on your investment. Otherwise of course no one will ever build new networks and that would be a very undesirable situation.

REPORTER: So people in the bush can never hope to get the same deal as people in the city?

ALSTON: Well, people in the bush are getting better and better deals all the time. And I think they are actually. I mean, if you take one of the initiatives we announced recently where Telstra will be providing a minimum of nineteen point two kilobits per second. That's a guaranteed minimum for people wanting fast access to the Internet. It gives them web browsing, it gives them chats. It gives them all the things that they would want in the same way that people in the cities have had it for years.

And of course, the untimed local call ... a hundred and fifty million dollar tender to vast areas of regional Australia is something that's never been around before. But we've been able to deliver that. So people in rural areas are now getting a very good deal.

REPORTER: Did the government have anything to do with this zoning review? Or did Telstra proceed with it out of the goodness of its heart?

ALSTON: Oh, look, I think it's a combination. We have been concerned about the issue for some time. We're not in the business of forcing Telstra to do things that are clearly uneconomic. That's the Labor Party approach. But what we believe is that Telstra should explore the new opportunities that technology offers. And we do have a series of systems in place that require that to occur and they agreed to undertake this zone review. And it's taken a fair while but I think the end result's a very good one.

REPORTER: Now, many would say this is an argument against full privatisation. That because the government still has a controlling interest in Telstra, it can push it into things like this.

ALSTON: Well, you see, you can have your argument about that, Laurie. But at the end of the day, what you can do on the one hand is persuade Telstra to do certain things. On the other hand, there are clearly things that are uneconomic for them to do, such as untimed local calls in those outer extended zones. It could have cost a hundred and fifty million dollars to put the infrastructure in place.

Now the Labor Party's approach to all that is to say we'll require Telstra to adopt a nation building role. Now this is a recipe for disaster. I mean, if youwant to see a share price in free fall, put that into place. Mr Beazley is going to have an institutionalised dialogue with the Telstra board to force equalisation.

Now it's monumental hypocrisy because he was the Minister back in '91 that required Telstra to operate commercially. But if you want to get Telstra to do things that are uneconomic, you have to pay for it. Otherwise, of course, the shareholders will be huge losers.

You'll probably find the board has to resign because it's in breach and then you're back in the business of having to protect them from competition to keep the share price up. I mean, what you'll end up doing is making Cuba and Albania look like competition junkies. The Labor Party wants to take this back to the PNG and you can't turn back the clock in that way.

OAKES: Well we do have other countries with...that governments own telcos don't we?

ALSTON: Oh, there are all different ty... models Laurie. Full, partial, very few with none at all.

OAKES: You see the reason I raise is that the government, as I understand it, has raised no objection to the proposed takeover of Cable & Wireless Optus by SingTel which is seventy-eight per cent owned by the Singapore government. What's the difference?

ALSTON: Well we are talking about what you expect from a domestic carrier and one that's as dominant as Telstra. At the end of the day you...you're not going to force SingTel to operate un-commercially in this country nor in any carrier for that matter.

So why should you take a different approach to Telstra? If you want Telstra to do things that are going to cost it real money to the bottom line, that will have an adverse impact on shareholder value then you pay for the privilege and that's why we've used a lot of budget funding to enable to do that...

OAKES: Senator my point is...

ALSTON: ...so that it's not forced into doing it.

OAKES: My point is that the government says that it's silly to have a government owned telco in the form of Telstra, that it should be totally privatised. But at the same time the government's quite happy to allow a foreign government owned company to takeover the other carrier Optus. I mean, surely that's illogical.

ALSTON: Well no, as I say Laurie, you're talking about whether we should approve or disapprove of foreign bids for international players. And we have a number of telcos in this country that are foreign owned in whole or in part.

OAKES: But we're talking about government owned, foreign government owned. You're saying the Australian government can't have a holding in Telstra but it's okay for the Singapore government to own the other major carrier. It's a bit silly isn't it?

ALSTON: They make their own arrangements Laurie. As far as we're concerned...

OAKES: But this is our country and you are the government. You make the arrangements.

ALSTON: Yes, but can we...well look the decision in relation to Optus is whether or not you allow a maximum competition, whether you have constraints on international telcos because you don't like their structures. The issue with Telstra is the extent to which it's able to raise its own funds in the marketplace, whether it can issue new shares and it can't under current arrangements. Or whether indeed you simply impose obligations onÃ¢â‚¬¦ without given compensation. That's the Labor Party approach.

OAKES: So...

ALSTON: But that is not a sensible way to do it.

OAKES: So it's okay to have a telco owned by a foreign government but not by ours?

ALSTON: Well it's okay to allow foreigners to come into this country and offer competition. I mean, if the day came when we said we don't like the way you run your telcos so we won't let you here then you will dry up competition overnight. The issue is on what basis should Telstra be allowed to go forward.

Should it be allowed to operate commercially or not and the Labor Party says no. They want to have an institutionalised dialogue to give it a nation building role and that's code for saying they'll force it to do things that it wouldn't otherwise do because it's got obligations to act commercially.

OAKES: Well could I ask you, are you...is the government still committed to full privatisation of

Telstra?

ALSTON: Well what we've said time and again Laurie, is we won't go further down this track until we've fully addressed the recommendations of the public inquiry we conducted last year. And that means both ...that means insuring that you get better quality, ordinary telephone calls... so faster installation and fault repairs. Better quality access for mobile phone coverage so there'll be another ninety million dollars to...

OAKES: I know you've said that time and again, but you said in February the government is still fully committed to privatisation of Telstra.

ALSTON: But we've said...we've said it's not... but it's not off the agenda Laurie until we've addressed those issues. We were not satisfied with the adequacy of telecommunication services particularly outside the metropolitan areas. I mean we got a general tick from that inquiry but it identified a number of areas, seventeen recommendations. We've got to act on those.

OAKES: But Senator, isn't the truth that you got an almighty kick where it hurts after you said that and, in fact, you figured in the notorious Shane Stone memo. If I could read you a part of that memo that's never been published before, he wrote to the Prime Minister [reads], there appears to be a simmering contempt for Dick Alston particularly after the Telstra debacle three days out from the Queensland election.

Now that's the kind of thing that stops you repeating your comment that you're still comment to the sale of Telstra isn't it?

ALSTON: Well Laurie, I think if you go back and look at what happened on that occasion you'll find that a journalist actually fabricated a story so that I didn't say anything in the wake of the WA election. What happened was that we've made it plain time and again that we won't go further down that path and I've said that on many occasions and I've said it on the occasion that prompted that interview that I presume that's a reference to.

OAKES: Okay if we could move onto the Internet gambling bill. Is the government going to proceed with that debate on Tuesday or is it still on hold as the Prime Minister told us a fortnight ago?

ALSTON: We'll be wanting to get it through the parliament in the last sitting fortnight before the recess, Laurie.

REPORTER: So what's happening then to the amendments designed to stop unintended consequences? For example, designed to stop this affecting linked jackpot poker machines.

ALSTON: Well, we've looked at a package of amendments and we'll be considering those at the same time. I mean, the issue really is not to wind the clock back but to address the future explosion of gambling opportunities, which Australians have made it very clear they don't want. Seventy-five per cent of people say they don't want Internet gambling. I mean, even Mark Latham own Internet poll told him that two-thirds of Australians don't want Internet gambling.

REPORTER: But you've now found that your bill applies to linked jackpot poker machines, which are...according to the Prime Minister...a social evil. And now you're running away from using that power. You're going to exempt them from your bill, that's right, isn't it?

ALSTON: Well, only insofar as we're maintaining the status quo, Laurie. I mean, what we...

REPORTER: And you don't see that as hypocrisy?

ALSTON: No, I think the issue here is that we have no direct or express power in relation to poker machines. That's clearly...

REPORTER: You do have the linked jackpot poker machines?

ALSTON: Well, you do in the sense that you can ensure that you don't accidentally put them out of business. But if you're trying to address the explosion...

REPORTER: Well, your purpose is to put them out of business (laughs).

ALSTON: Well, Laurie, you could use a combination of powers like the Corporations power to effectively close down the states altogether. But we've always taken the view, as do they, that we have a direct responsibility in relation to telecommunications which applies to interactive services. They have a direct responsibility for poker machines, and they ought to address that responsibility.

What we want to do here is make sure that we don't get that quantum increase in accessibility in what I think are mindless forms of gambling activity. I mean, in America more than a million people a day are losing money.

REPORTER: What about wagering, is the government going to amend the bill so that Internet gambling on horse races is okay?

ALSTON: Well, I think the Prime Minister made it pretty plain the other day that he doesn't want to do anything that would adversely impact on the racing industry. So we'll be having a good look at those.

REPORTER: What about dog racing, greyhounds?

ALSTON: Well, I think we're talking about sports betting generally, so racing would be included as part of them. But I mean...

REPORTER: So you'd be able to bet on the Internet on football matches, cricket matches?

ALSTON: Well, if you were to exempt sports betting, yes, Laurie, what you'd be left with is the issue of casino type activities. And that's why I think it's beyond comprehension that the Labor Party doesn't seem to want to do anything about it. I mean, why on earth would Kim Beazley want to see an electronic poker machine in every living room?

I mean, I don't know who he thinks he's catering for, he's been soft on drugs, it was too hard to do anything about pornography on the Internet, now apparently it's all too hard here because he somehow thinks it's an IT issue. This is a social policy issue. You've got four and-a-half million Americans who already lost money on interactive gaming, and we don't want that in Australia, and the public have repeatedly told us that.

REPORTER: So just to clarify that though, you're looking at exempting all sports wagering?

ALSTON: Well that's one of the proposals that's been put to us, Laurie. And we'll have a look at that over the next day or two and we'll proceed from there.

REPORTER: We're nearly out of time, but I want to ask you about the ABC. We can't let an interview go by without that (laughs).

ALSTON: Yeah.

REPORTER: The term of ABC chairman Donald McDonald expires, I think, in a couple of weeks. I assume you're going to reappoint him.

ALSTON: Well, that will be a cabinet decision of course, Laurie, but we think the board and the chairman have done a good job, and clearly we want them to keep managing the ABC in a difficult transitional period.

REPORTER: On this occasion, though, will you advise Mr McDonald that it's unwise to enter politics during an election campaign as he did last time?

ALSTON: Well, we don't tell people how to conduct their own affairs. I think they exercise their own judgment, Laurie.

REPORTER: Did you approve of that, where he introduced the Prime Minister at a Liberal Party function, praised him, shook his hand, is that the proper role of an ABC chairman?

ALSTON: Well, I think we might, I think I'd be much more concerned when Idiscovered the fact that David Hill had been a paid up member of the ALP throughout his term as managing director. I mean, to me that is an ongoing compromise of the highest order.

REPORTER: It's one thing to be a ticket holder in a party, it's another thing to take part in an election meeting. Do you ...will you be happy if Mr McDonald does that again in the forthcoming election?

ALSTON: Well, I think everyone in the community knows that Mr McDonald is a friend of the Prime Minister. That's not a hanging offence. What I think is much more concerning is when you've got supposed citizens groups like Friends of the ABC running around pretending they're interested in sensible political debate, but now we discover that they're arm in arm with the trade union movement. They're getting...the Labor Party gets eighty thousand dollars from the CEPSU [sic]. They're running a joint venture with a rally today.

I mean, that's the sort of thing that I think people are much more concerned about. They want to see an ABC that is really moving forward. They don't want to see party political, anti-government rant rave parties going on. They want to see the ABC properly funded, and of course it's getting about ninety-six million dollars more in real terms now than it was getting five years ago, in addition to the six hundred million dollars we've committed for digital.

REPORTER: Senator, we thank you.

ALSTON: Thanks very much, Laurie.

REPORTER: Back to you, Jim.

PRESENTER: Senator Alston talking there with Laurie Oakes.

ENDS.

Transcript supplied by Rehame Ã¢â‚¬â€œ Custom News and Analysis

Return to top